

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALERTONE SERVICE, INC.,

Plaintiff,

v.

RQ CONSTRUCTION, LLC,

Defendant.

Case No. 1:25-cv-00493-CDB

ORDER VACATING SCHEDULING  
CONFERENCE

(Doc. 4)

FINDINGS AND RECOMMENDATIONS  
TO DISMISS ACTION WITHOUT  
PREJUDICE FOR PLAINTIFF'S FAILURE  
TO PROSECUTE AND TO OBEY COURT  
ORDERS

(Doc. 4)

**14-DAY OBJECTION PERIOD**

Clerk of the Court to Randomly Assign  
District Judge

**Background**

Plaintiff Alertone Service, Inc. ("Plaintiff") initiated this action with the filing of a complaint on April 28, 2025. (Doc. 1). On July 21, 2025, the Court issued an order directing Plaintiff to show cause why sanctions should not be imposed for Plaintiff's failure to comply with the Court's direction to file proofs of service of summons and complaint. (Doc. 4). Plaintiff failed to timely file any response to the Court's order.

In its order, the Court admonished Plaintiff that "[a]ny failure by Plaintiff to timely

1 **respond to this order to show cause will result in the imposition of sanctions, including a**  
2 **recommendation to dismiss this action.”** *Id.* at 2 (emphasis in original).

3 In addition to failing to comply with the Court’s order to show cause, Plaintiff has failed  
4 to timely serve Defendant under Rule 4(m), Fed. R. Civ. P., and the time to do so has expired.  
5 Accordingly, for the reasons below, the undersigned will recommend that the Court dismiss this  
6 action without prejudice.

7 **Governing Legal Standards**

8 Local Rule 110, corresponding with Federal Rule of Civil Procedure 11, provides that  
9 “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may  
10 be grounds for imposition by the Court of any and all sanctions ... within the inherent power of  
11 the Court.” E.D. Cal. Local Rule 110. The Court has the inherent power to control its docket and  
12 may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the  
13 action. *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000). A court may dismiss an  
14 action based on a party’s failure to prosecute an action, obey a court order, or comply with local  
15 rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure  
16 to comply with a court order to amend a complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128,  
17 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*,  
18 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local  
19 rules).

20 “In determining whether to dismiss an action for lack of prosecution, the district court is  
21 required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation;  
22 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
23 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
24 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (quotation and citation  
25 omitted). These factors guide a court in deciding what to do and are not conditions that must be  
26 met in order for a court to take action. *In re Phenylpropanolamine (PPA) Products Liability*  
27 *Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

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1        **Discussion**

2        Here, Plaintiff has failed to comply with the Court's orders. Plaintiff has filed no response  
3 to the Court's order to show cause (Doc. 4), nor any proof of service of summons and complaint  
4 upon Defendant. There are no other reasonable alternatives available to address Plaintiff's failure  
5 to respond and otherwise obey this Court's orders. Thus, the first and second factors—the  
6 expeditious resolution of litigation and the Court's need to manage its docket—weigh in favor of  
7 dismissal. *Carey*, 856 F.2d at 1440.

8        The third factor, risk of prejudice to Defendant, also weighs fairly in favor of dismissal  
9 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an  
10 action. *See Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). This matter cannot proceed  
11 further without Plaintiff's participation to prosecute the case. The presumption of injury holds  
12 given Plaintiff's unreasonable delay in prosecuting this action. Thus, the third factor—a risk of  
13 prejudice to the Defendant—also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440.

14        The fourth factor usually weighs against dismissal because public policy favors disposition  
15 on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor  
16 lends little support to a party whose responsibility it is to move a case toward disposition on the  
17 merits but whose conduct impedes progress in that direction.” *In re PPA*, 460 F.3d at 1228.  
18 Plaintiff has not moved this case forward toward disposition on the merits. Instead, Plaintiff has  
19 failed to comply with this Court's order and is, thus, impeding the progress of this action.  
20 Therefore, the fourth factor — the public policy favoring disposition of cases on their merits —  
21 also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440.

22        Finally, the Court's warning to a party that failure to obey the court's order will result in  
23 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262.  
24 Here, the Court cautioned Plaintiff regarding possible dismissal for failure to obey the Court's  
25 orders. *See* (Doc. 4 at 2) (“**Any failure by Plaintiff to timely respond to this order to show**  
26 **cause will result in the imposition of sanctions, including a recommendation to dismiss this**  
27 **action.**”) (emphasis in original).

28        Plaintiff was adequately forewarned that the failure to timely respond to the show cause

1 order could result in terminating sanctions. Because Plaintiff has failed to comply with this Court's  
2 orders, and in so doing is failing to prosecute his case, the undersigned finds the sanction of  
3 dismissal warranted and will recommend dismissal of this action.

4 In addition, Rule 4(m) of the Federal Rules of Civil Procedure provides: "If a defendant is  
5 not served within 90 days after the complaint is filed, the court - on motion or on its own after  
6 notice to the plaintiff - must dismiss the action without prejudice against that defendant or order  
7 that service be made within a specified time." Fed. R. Civ. P. 4(m). Absent a showing of good  
8 cause, failure to comply with Rule 4(m) requires dismissal of any unserved defendant.

9 Because more than 90 days have passed since the filing of the complaint and Plaintiff has  
10 not made any showing regarding said failure to serve Defendant, good cause does not exist to  
11 further extend the time for perfecting service.

12 **Conclusion and Recommendation**

13 The Clerk of the Court is directed to randomly assign a District Judge.

14 For the foregoing reasons, it is **HEREBY ORDERED** that the scheduling conference set  
15 for September 11, 2025, at 10:00 a.m. (Doc. 4) is VACATED.

16 And **IT IS RECOMMENDED** that:

- 17 1. This action be dismissed without prejudice for Plaintiff's failure to prosecute this action,  
18 failure to comply with the Court's orders, and failure to comply with Rule 4(m), Fed. R.  
19 Civ. P.; and  
20 2. The Clerk of the Court close this case.

21 These findings and recommendations will be submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after  
23 being served with these findings and recommendations, any party may file written objections with  
24 the Court. The document should be captioned "Objections to Magistrate Judge's Findings and  
25 Recommendations." The parties are advised that failure to file objections within the specified time

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1 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
2 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3 IT IS SO ORDERED.

4 Dated: **September 3, 2025**

  
5 UNITED STATES MAGISTRATE JUDGE